INDEX.

ADMIRALTY.

1. A statement that a steamship, in the harbor of New York, with no fog, meeting a tug with a tow, starboards after receiving two whistles from the tug and subsequently ports and attempts to pass between the tug and her tow, is grossly improbable. *The Ludvig Holberg*, 60.
2. A steamship, running in a fog at dead slow and coming in contact with a tug, cannot be held responsible simply because, a few minutes before the collision, she had been running full speed. *Ib.*
3. A steamer running in a fog is not obliged to stop at the first signal heard by her unless its proximity be such as to indicate immediate danger. *Ib.*
4. The remarks of the court in *The Colorado*, 91 U. S. 692, 698, held not to apply to this case. *Ib.*
5. The findings show that the tug was in fault in failing to send three blasts of whistle, in quick succession. *Ib.*
6. When, in a collision case, uncontradicted testimony establishes fault on the part of one vessel, the mere raising a doubt touching the conduct of the other will not overcome its effect. *Ib.*
7. For reasons stated in the opinion, the court regrets that the tug could not be brought into this case, and it affirms the decree of the court below. *Ib.*
8. In every contract for the carriage of goods by sea, unless otherwise expressly stipulated, there is a warranty on the part of the shipowner that the ship is seaworthy at the time of beginning her voyage, and not merely that he does not know her to be unseaworthy, or that he has used his best efforts to make her seaworthy; and this being so, his undertaking is not discharged because the want of fitness is the result of latent defects. *The Caledonia*, 124.
9. A bill of lading whereby a steamship owner undertakes to deliver live cattle at a foreign port, loss or damage from delays, steam boilers and machinery or defects therein excepted, does not exempt him from liability under such warranty for injury happening to the cattle through an unexpected prolongation of the voyage, in consequence of a breaking of the shaft caused by a latent defect in it, which existed before and at the commencement of the voyage. *Ib.*
10. Exceptions in a bill of lading are to be construed most strongly

against the shipowner; and when they form, in the contract, part of long enumerations of excepted causes of damage, all the rest of which relate to matters subsequent to the beginning of the voyage, they must be treated as equally limited in their scope. *Ib.*

11. As between the shipper and the shipowner, the bill of lading only can be considered as the contract. *Ib.*

See GENERAL AVERAGE.

AMENDMENT.

See WRIT OF ERROR, 1.

APPEAL.

An appeal will not lie from an order of a Circuit Judge at chambers. *Lambert* v. *Barrett*, 697.

CASES AFFIRMED OR FOLLOWED.

United States v. *Piatt and Salisbury*, 157 U. S. 113, followed. *United States* v. *Salisbury*, 121.

See CRIMINAL LAW, 17;
JURISDICTION, B, 7, 10;
STATUTE, A, 2.

CASES DISTINGUISHED.

Pennsylvania Co. v. *Roy*, 102 U. S. 451, distinguished from this case. *Baltimore & Potomac Railroad Co.* v. *Mackey*, 72.

CONSPIRACY.

See CRIMINAL LAW, 10.

CONSTITUTIONAL LAW.

1. The act of the legislature of Louisiana of July 12, 1888, No. 133, authorizing the enforcement by mandamus without a jury of contracts by corporations with municipal corporations in that State with reference to the paving, grading, repairing, etc., of streets, highways, bridges, etc., simply gives an additional remedy to the party entitled to the performance, without impairing any substantial right of the other party; does not impair the obligation of the contract sought to be enforced; and is not in conflict with the Constitution of the United States. *New Orleans City and Lake Railroad Co.* v. *Louisiana ex rel. New Orleans*, 219.
2. The denial by a state court of an application to amend a petition for the removal of the cause to a Federal court is not the denial of a right secured by the Constitution of the United States. *Stevens' Administrator* v. *Nichols*, 370.
3. In the cases referred to in the opinion of the court in this case, begin-

ning with *Hylton* v. *United States*, 3 Dall. 171, (February Term, 1796,) and ending with *Springer* v. *United States*, 102 U. S. 586, (October Term, 1880,) taxes on land are conceded to be direct taxes, and in none of them is it determined that a tax on rent or income derived from land is not a tax on land. *Pollock* v. *Farmers' Loan & Trust Company*, 429.

4. A tax on the rents or income of real estate is a direct tax, within the meaning of that term as used in the Constitution of the United States. *Ib.*
5. A tax upon income derived from the interest of bonds issued by a municipal corporation is a tax upon the power of the State and its instrumentalities to borrow money, and is consequently repugnant to the Constitution of the United States. *Ib.*
6. So much of the act "to reduce taxation, to provide revenue for the government, and for other purposes," 28 Stat. 509, c. 349, as provides for levying taxes upon rents or income derived from real estate, or from the interest on municipal bonds, is repugnant to the Constitution of the United States and is invalid. *Ib.*
7. Upon each of the other questions argued at the bar, to wit: 1, Whether the void provision as to rents and income from real estate invalidates the whole act? 2, Whether as to the income from personal property as such, the act is unconstitutional as laying direct taxes? 3, Whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity on either of the grounds suggested? — the justices who heard the argument are equally divided, and, therefore, no opinion is expressed. *Ib.*
8. When a prisoner is indicted in a state court for murder, it is for the courts of the State to decide whether the indictment sufficiently charges that crime in the first degree. *Bergemann* v. *Backer*, 655.
9. In view of the decisions by the highest court of New Jersey, referred to in the opinion, declaring the meaning and scope of the statutes of that State under which the accused was prosecuted, it cannot be held that he was proceeded against under an indictment based upon statutes denying to him the equal protection of the laws, or that were inconsistent with due process of law, as prescribed by the Fourteenth Amendment to the Constitution. *Ib.*

See STARE DECISIS.

CONTRACT.

In June, 1887, the Pullman Car Company of Chicago wrote to the Metropolitan Street Railway Company of Kansas City, proposing to build for it 25 cable cars according to specifications attached, and to deliver them free on board at Pullman Junction in Illinois, the cars to be inspected and accepted at the Pullman works, and to be paid for on delivery, the written acceptance of the railway company to constitute a contract mutually binding. Nothing was said about brakes, except

that they were to be operated by gripmen with lever, both trucks. The railway company accepted in writing. The details of construction were then considered and agreed upon between the two companies. Nothing further was said about brakes except that the railway company required them to be heavy and extra powerful. Brakes were then designed by the car company, but no designs of them were furnished to the railway company. When 12 cars were finished, but before any had been delivered, the agent of the railway company went, at the request of the car company, to the shops of the latter in Illinois, and there made a thorough examination of the 12 cars, working the brakes and carefully watching their operation. He expressed himself entirely satisfied with them, and ordered the others to be finished in the same way, and all to be forwarded. This was done in five shipments between February 24 and March 30, 1888. Before the last shipment was made the railway company, on the 23d of March, tried the cars and found that the brakes would not work satisfactorily. They notified the car company at once, and it sent its engineer to Kansas City. When he left Kansas City he claimed that he had remedied the trouble. On the 5th of April the car company presented its bill for payment. On the 11th the railway company declined to pay it unless the brakes were first made right, and asked the car company to send a man to make the necessary changes, adding that if this were not done it would make the changes itself and charge the car company with the expense of them. The car company did send a man, who worked upon the brakes for some time, but without remedying the difficulty. On the 12th of May the railway company declined to accept the cars, and so notified the car company. It stored the 25 cars in Kansas City, and ordered a supply of cars elsewhere. The car company thereupon sued the railway company, to recover the contract price for the cars. *Held*, (1) That the title to the first 12 cars passed to the railway company when its agent inspected and accepted them at the shops of the car company; (2) that the title to the remainder passed to the railway company when they were put on cars at Pullman Junction, to be forwarded to that company; (3) that under the circumstances the most that the railway company could claim was the reasonable cost of obtaining new brakes adapted for use on the cars constructed under the contract. *Pullman's Palace Car Company* v. *Metropolitan Street Railway Company*, 94.

See POST OFFICE DEPARTMENT.

CORPORATION.

1. A corporation, acting in good faith and without any purpose of defrauding its creditors, but with the sole object of continuing a business which promises to be successful, may give a mortgage to directors who have lent their credit to it, in order to induce a continuance of

that credit, and to obtain renewals of maturing paper at a time when the corporation, although it may not be then in fact possessed of assets equal at cash prices to its indebtedness, is in fact a going concern, and is intending and is expecting to continue in business. *Sanford Fork & Tool Co.* v. *Howe, Brown & Co., Limited*, 312.

2. Under the circumstances detailed in the statement of facts and in the opinion of the court in this case, it is *held*, that the mortgage given by the Sanford Fork and Tool Company, by special direction of its stockholders, to its directors to secure them for indorsing and for continuing to indorse the paper of the company, is valid. *Ib.*

COSTS.

See REMOVAL OF CAUSES.

COURT AND JURY.

1. Where the evidence is conflicting, and no reasonable or proper inference can be drawn from it as matter of law, the case should be left to the jury. *Baltimore & Potomac Railroad Co.* v. *Mackey*, 72.
2. Where the trial judge is satisfied upon the evidence that the plaintiff is not entitled to recover, and that a verdict, if rendered for plaintiff, must be set aside, the court may instruct the jury to find for the defendant, and in such case no constitutional question arises; but if the court errs as a matter of law in so doing, the remedy lies in a review in the appropriate court. *Treat Manufacturing Co.* v. *Standard Steel and Iron Co.*, 674.

CRIMINAL LAW.

1. The omission of the formal indorsement of an indictment as "a true bill," signed by the foreman of the grand jury, is not necessarily and under all circumstances fatal, although it is advisable that the indictment should be endorsed. *Frisbie* v. *United States*, 160.
2. Such a defect is waived if the objection be not made in the first instance and before trial. *Ib.*
3. Pleading to an indictment admits its genuineness as a record. *Ib.*
4. The provision in the act of June 27, 1890, c. 634, 26 Stat. 182, forbidding an agent, attorney, or other person engaged in preparing, presenting, or prosecuting a claim for a pension under that act from demanding or receiving a greater fee than ten dollars for his services is constitutional. *Ib.*
5. An indictment for violating that provision which describes the defendant as a "lawyer" is sufficient. *Ib.*
6. The offence against that act is committed when a sum greater than ten dollars has been taken, without regard to the fact whether the pension money has or has not been received. *Ib.*
7. When the amount of the excess so taken is unknown to the grand jury, it is proper to allege that fact in the indictment. *Ib.*

8. It is unnecessary to aver a demand for the return of the money wrongfully taken. *Ib.*
9. The omission to charge that the offence was "contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States" is immaterial. *Ib.*
10. In an indictment and prosecution under Rev. Stat. § 5480, as amended by the act of March 2, 1889, c. 393, for a conspiracy to defraud by means of the post office, three matters of fact must be charged in the indictment and established by the evidence: (1) That the persons charged devised a scheme to defraud; (2) that they intended to effect this scheme by opening or intending to open correspondence with some other person through the post office establishment or by inciting such other person to open communication with them; (3) and that in carrying out such scheme such person must have either deposited a letter or packet in the post office, or taken or received one therefrom. *Stokes* v. *United States*, 187.
11. An objection to the admissibility of an envelope against the defendant in such a case upon the ground that it was not shown to be in his handwriting is not sustained, as the bill of exceptions did not purport to contain all the evidence. *Ib.*
12. Other objections to the admissibility of evidence considered and held to be without merit. *Ib.*
13. When a paper admitted to be in the handwriting of a defendant in a criminal prosecution is admitted in evidence for another purpose, it is competent for the jury to compare it with the handwriting of a letter which he is accused of, and indicted for, writing, for the purpose of drawing their own conclusions respecting the latter. *Ib.*
14. The first count in an indictment containing three counts charged the accused with "having counterfeit coin in his possession, with intent to defraud certain persons to this grand inquest unknown." The jury found him "guilty in the first count for having in possession counterfeit minor coin. Not guilty as to second and third counts." *Held*, that the verdict was a general verdict of guilty under the first count, and that the words attached did not qualify the conclusion of guilt. *Statler* v. *United States*, 277.
15. Several objections to the admissibility of evidence considered and disposed of. *Cochran and Sayre* v. *United States*, 286.
16. Some objections to the charge considered and disposed of. *Ib.*
17. The defendants requested the court to charge the jury as follows: "You are further instructed that the defendants are presumed to be innocent until the contrary appears beyond a reasonable doubt, and that every reasonable doubt or presumption arising from the evidence must be construed in their favor." The court refused to give this instruction, but instead thereof gave a carefully prepared definition of reasonable doubt, without referring to the presumption of innocence which attends an accused at every stage of the proceeding. *Held*,

following *Coffin* v. *United States*, 156 U. S. 432, that this was error, as the defendants were entitled to an instruction upon the point of the presumption of innocence, if requested. *Ib.*

18. The offence of knowingly smuggling or clandestinely introducing goods, etc., subject to duty into the United States without paying such duty, in violation of the provisions of Rev. Stat. § 2865, and of concealing such smuggled goods is only a misdemeanor, and the defendant is only entitled to three peremptory challenges. *Reagan* v. *United States*, 301.

19. At the request of the defendant, in a murder case, the court instructed the jury that where the evidence showed that the defendant did not commit the actual killing, and it was uncertain whether he did participate in it, the jury might regard the absence of any proof of motive for the killing in finding their verdict; but the court further added that the absence or presence of motive is not a necessary requisite to enable the jury to find the guilt of a party, because it is frequently impossible for the government to find a motive. *Held*, that, in thus qualifying the instruction the judge committed no error. *Johnson, alias Overton* v. *United States*, 320.

20. Though the examination of the evidence leaves on this court the impression that there was reasonable doubt of the guilt of the accused, the verdict of the jury to the contrary and the action of the court below in overruling a motion for a new trial shows that the trial court was satisfied with the verdict, and, there being no error in the rulings, it is not disturbed. *Ib.*

21. In a trial for murder by shooting with a pistol it appeared that the accused and the deceased had had difficulties; that the accused, knowing that he was to meet the deceased, had armed himself with a pistol; that when they met the deceased and his companions were armed with sticks; that an altercation ensued which resulted in the shooting; and the evidence was conflicting as to who had made the first attack. The court, under exception, instructed the jury as follows: "Now, gentlemen, these are the three conditions which I give you in the case. I have told you that if it is true that this defendant went up on one side of the fence and when there struck Philip Henson in the mouth and then shot him, that is murder. On the other hand, if it is true that Henson and the other boys attacked him with sticks, and while that attack was going on and in the heat of that affray, and the sticks were not of a dangerous or deadly character, and under such circumstances he shot and killed Philip Henson, that would be manslaughter; but if there was an absence of that condition, then there is no manslaughter in it, nor could there be any self-defence in it. There could be nothing else but this distinct grade of crime known as murder; because self-defence, as I have before defined to you, contemplates the doing of something upon the part of the one slain, or the ones acting with him, that was either actually and really so apparently

of a deadly character, or which threatened great violence to the person, or that which seemed to do so. If they assaulted him with these sticks, and they were not deadly weapons, and they were engaged in a conflict, and in that conflict the defendant shot Philip Henson, without previous preparation, without previous deliberation, without previous selection of a deadly weapon, without a contemplated purpose to use that deadly weapon in a dangerous way, then that would be manslaughter, and it could not be self-defence, because the injury received would not be of that deadly character or that dangerous nature that could give a man the right to slay another because of threatened deadly injury or actual great bodily injury received." *Held*, that this instruction was erroneous in withdrawing from the jury the question of self-defence, and likewise in telling them that the intentional arming himself with a pistol by the defendant, even if with a view to self-defence, would make a case of murder unless the actual affray developed a case of necessary self-defence. *Allen* v. *United States*, 675.

See INDICTMENT;
WITNESS.

CUSTOMS DUTIES.

1. Under Schedule K, clause 2, of the tariff act of March 3, 1883, c. 120, all hair of the alpaca, goat, and other like animals, is subjected to a uniform duty of ten cents a pound; and goat's hair is not comprehended in the clause relating to hair "not specially provided for." *Cooper* v. *Dobson*, 148.
2. Under the tariff act of March 3, 1883, c. 120, rugs made as rugs, and distinguishable as such by reason of their process of manufacture, size, shape, pattern, etc., were subject to the duty imposed upon rugs; and rugs made from pieces of carpets or carpetings, to the rate imposed upon the carpet from which they were made. *Beuttell* v. *Magone*, 154.
3. An importer of flaxseed, containing an ascertainable percentage of impurities, composed of clay, sand, and gravel, is entitled to an allowance of that percentage in assessing duties upon the gross weight of the goods. *Seeberger* v. *Wright & Lawther Oil and Lead Manufacturing Co.*, 183.
4. Under the act of February 26, 1845, c. 22, 5 Stat. 727, a protest against the exaction of duties on imported goods, in order to be available for recovering the amount of duties illegally exacted, must be made at or before their actual payment; and when the importer deposits with a collector an amount supposed to be sufficient to pay the duties, subject to future liquidation, and receives the goods, and on such liquidation an amount is found to be due the importer as overpayment and is refunded to him, a protest made after the deposit and receipt of the goods, but before the liquidation, is too late and is of no avail. *Barney* v. *Rickard*, 352.

5. In an action, tried in 1890, to recover duties alleged to have been illegally exacted in 1861 on an importation of bareges, grenadines, maretz, and merinos, the plaintiff introduced no samples of the imported goods, nor any evidence as to their loss or destruction, and gave no reasons why they were not preserved and produced. He showed to one of his witnesses samples of grenadines, bareges, etc., but without connecting them in any way with the importations, and questioned the witness concerning them. *Held*, that their admission tended to mislead the jury, and was error; and that such evidence came within the rule that "a fact which renders the existence or non-existence of any fact in issue probable by reason of its general resemblance thereto, and not by reason of its being connected therewith, is deemed not to be relevant to such fact." *Ib.*

DEMURRER.

See POST OFFICE DEPARTMENT.

ESTOPPEL.

1. If, in an action at law upon a written contract, oral evidence offered by the defendant that the writing signed by the parties was not intended as a contract, nor understood by either party to be binding as such, is excluded by the court, upon the plaintiff's objection, as incompetent to control the written contract, he is estopped, at the hearing of a bill in equity thereupon filed by the defendant for an injunction against the prosecution of the action at law, to object that the evidence was admissible at law only. *Michels* v. *Olmstead*, 198.
2. In determining whether the judgment plaintiff and real owner of an assigned judgment is estopped to assert his ownership as against a second assignee, on the ground that the second assignee occupies the position of a purchaser for value in good faith and without notice and in reliance on the apparent ownership, the amount of the consideration paid by him is an important fact. *Baker* v. *Wood*, 212.
3. When such amount is greatly disproportionate to the true value of the judgment, that fact may authorize the inference that the claim to have paid value is a pretence; and it is further important, as bearing on the questions of notice and of good faith. *Ib.*
4. In such case the interest of the second assignee of the judgment, if recognized, should be limited to the amount he actually paid and the measure of the estoppel also limited accordingly. *Ib.*

See FINDINGS OF FACT; JUDGMENT; MINERAL LAND, 2; POST OFFICE DEPARTMENT.

EVIDENCE.

See CRIMINAL LAW, 10, 11, 12, ,13 51.

EXCEPTION.

1. When an instruction to the jury embodies several propositions of law, to some of which there are no objections, the party objecting must point out specifically to the trial court the part to which he objects, in order to avail himself of the objection. *Baltimore & Potomac Railroad Co.* v. *Mackey*, 72.
2. The record showed that plaintiff asked six instructions, of which the court gave two, declined to give one, and declined to give the other three except as covered by the general charge. The whole charge was contained in the bill of exceptions, which thus concluded: "To which refusal and charge of the court and the exclusion of evidence offered, and to the action of the court in refusing a new trial, plaintiff excepted and tendered this bill of exceptions, which was signed and sealed by the court and ordered to be made a part of the record in this cause." *Held*, that this exception was insufficient. *Jones* v. *East Tennessee, Virginia & Georgia Railroad Co.*, 682.

FINDINGS OF FACT.

Findings of fact in such cases, even when no statute provides for making them, are a declaration by the court of the matter which it determines, and are conclusive as to it in subsequent controversies between the parties. *Last Chance Mining Co.* v. *Tyler Mining Co.*, 683.

GENERAL AVERAGE.

1. The scuttling of a ship by the municipal authorities of a port, without the direction of her master or other commanding officer, to extinguish a fire in her hold, is not a general average loss. *Ralli* v. *Troop*, 386.
2. If the cargo in the hold of a ship moored in a port takes fire, and the port authorities come on board with fire-engines, take charge of her, pump steam and water into the hold, and move her and put her aground without any objection by the master; and the master successfully removes part of the cargo, and desires, and believes it to be prudent and feasible, to remove more; but the port authorities forbid and prevent his doing so, because of the danger of increasing the fire, and themselves extinguish the fire by scuttling the ship, whereby she becomes a wreck, not worth repairing; the loss of the ship is not a subject of contribution in general average against the owners of the cargo, although the court is of opinion that the measures taken by the port authorities were the best available to save the cargo from greater loss. *Ib.*

GUARDIAN AND WARD.

1. A guardian of an infant, appointed in one State, cannot maintain a suit in the Circuit Court of the United States held within another

State, to set aside the appointment or to compel an account of a guardian previously appointed in the latter State, except so far as authorized to do so by its laws. *Morgan* v. *Potter*, 195.

2. In a suit by an infant, by his next friend, the infant, and not the next friend, must be made the plaintiff. *Ib.*

HABEAS CORPUS.

1. The refusal by the state court to grant a writ of error to a person convicted of murder, or to stay the execution of a sentence, will not warrant a court of the United States in interfering in his behalf by writ of *habeas corpus*. *Bergemann* v. *Backer*, 655.
2. When a state court has jurisdiction of the offence and the accused under an indictment found under statutes of the State not void under the Constitution of the United States, and proceeds to judgment under such statutes, a Circuit Court of the United States has no authority to interfere with the execution of the sentence by means of a writ of *habeas corpus*. *Ib.*

INCOME TAX.

See CONSTITUTIONAL LAW, 3, 4, 5, 6, 7;
JURISDICTION, B, 9.

INDICTMENT.

1. In an indictment against the president and the assistant cashier of a national bank for making a false entry in a report, under Rev. Stat. § 5209, the report need not be described with technical accuracy; nor is it necessary to allege that the report in which the false entry was made was verified by the oath or affirmation of the president or cashier, or attested by the signature of the directors. *Cochran and Sayre* v. *United States*, 286.
2. In such an indictment the true test is, not whether it might possibly have been made more certain, but whether it contains every element of the offence intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offence, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. *Ib.*

See CRIMINAL LAW.

INSOLVENT DEBTOR.

See CORPORATION.

JUDGMENT.

1. When the jurisdiction of a controversy by a court is unquestioned, and the cause proceeds to final judgment, and no review is sought for, the judgment is conclusive upon the parties to the suit as to the matter decided, but not as to matters which might have been decided, but were not. *Last Chance Mining Co.* v. *Tyler Mining Co.*, 683.

2. A judgment by default is just as conclusive an adjudication between the parties of whatever is essential to support the judgment, as one rendered after answer and contest; and in such case facts are not open to further controversy if they are necessarily at variance with the judgment on the pleadings. *Ib.*

See MINERAL LAND, 2.

JURISDICTION.

A. GENERALLY.

A question of jurisdiction cannot be waived. *Mexican National Railroad Co.* v. *Davidson*, 201.

B. JURISDICTION OF THE SUPREME COURT.

1. The court below, in its order granting the appeal, said: "This appeal is granted solely upon the question of jurisdiction" and made further provisions for determining what parts of the record should be certified to this court under the appeal, under which it subsequently directed the portions of the record to be certified to this court, and the record was prepared accordingly. *Held*, that this was a sufficient certificate of a question of jurisdiction under the provisions of the Judiciary Act of March 3, 1891, c. 517, 26 Stat. 826, 827. *Shields* v. *Coleman*, 168.
2. This court has no original jurisdiction of a suit between a State on the one side, and citizens of another State and citizens of the same State on the other side. *California* v. *Southern Pacific Company*, 229.
3. When an original cause is pending in this court, to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and the finality which should characterize such an adjudication, to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigations in some other tribunal. *Ib.*
4. The city of Oakland and the Oakland Water Front Company are so situated in respect of this litigation, that the court ought not to proceed in their absence; and as, if they were brought in, the case would then be between the State of California, on the one hand, and a citizen of another State and citizens of California on the other, this court cannot, under such circumstances, take original jurisdiction of it. *Ib.*
5. The finding of the Maryland Court of Appeals, that there was no fund in the state treasury upon which the Comptroller could lawfully draw his warrant, because there had been no appropriation made by the state legislature for the payment of the commissions here claimed, was decisive of this case, and involved no Federal question. *Wailes* v. *Smith*, 271.
6. It being settled that by the joint resolution of March 3, 1891, 26 Stat. 1115, the jurisdiction of this court was preserved as to pending cases,

and cases wherein the writ of error on appeal should be sued out, or taken before July 1, 1891, the court has jurisdiction of this case, the writ of error having been allowed and sealed June 5, 1891. *Gulf, Colorado & Sante Fé Railway Co.* v. *Shane*, 348.

7. *Maynard* v. *Hecht*, 151 U. S. 324, affirmed to the point that, "Where an appeal or writ of error is taken from a District or a Circuit Court in which the jurisdiction of the court alone is in issue, a certificate from the court below of the question of jurisdiction to be decided is an absolute prerequisite for the exercise of jurisdiction here; and if it be wanting this court cannot take jurisdiction." *Colvin* v. *Jacksonville*, 368.
8. For the reasons stated in the opinion of the court it is *held*, (1) that this court has no jurisdiction to review the judgment of the Circuit Court in this case, and (2) that the writ of error was brought too late. *Lutcher* v. *United States*, 427.
9. A court of equity has jurisdiction to prevent a threatened breach of trust in the misapplication or diversion of the funds of a corporation by illegal payments out of its capital or profits; and such a bill being filed by a stockholder to prevent a trust company from voluntarily making returns for the imposition and payment of a tax claimed to be unconstitutional, and on the further ground of threatened multiplicity of suits and irreparable injury, and the objection of adequate remedy at law not having been raised below or in this court, and the question of jurisdiction having been waived by the United States, so far as it was within its power to do so, and the relief sought being to prevent the voluntary action of the trust company and not in respect to the assessment and collection of the tax, this court will proceed to judgment on the merits. *Pollock* v. *Farmers' Loan & Trust Company*, 429.
10. On the authority of *Maynard* v. *Hecht*, 151 U. S. 324, and *Colvin* v. *Jacksonville*, 157 U. S. 368, this case is dismissed for want of a certificate from the Circuit Court certifying the question of its jurisdiction for decision here. *Davis & Rankin Building Co.* v. *Barber*, 673.
11. The contention that petitioner cannot be made to pay the penalty for the crime of which he was adjudged guilty, because he was not executed at the time originally designated, was not sustained by the chief justice of the State nor by the associate justice of its Supreme Court, to whom, severally, he applied, and their action is not open to review here. *Lambert* v. *Barrett*, 697.
12. An appeal will not lie from an order of a Circuit Judge at chambers. *Ib.*

C. Of Circuit Courts of the United States.

1. Under § 2 of the act of March 3, 1887, c. 373, 24 Stat. 552, as corrected by the act of August 13, 1888, c. 886, 25 Stat. 433, the jurisdiction of a Circuit Court of the United States, on removal by the defendant of an action from a state court, is limited to such suits as might have been

brought in that court under the first section. *Mexican National Railroad Co.* v. *Davidson*, 201.

2. Although section 3186 of the Revised Statutes of Wisconsin may have enlarged the ordinary equitable action to quiet title and remove a cloud, the Circuit Court of the United States, sitting in that District, may take jurisdiction of a bill properly brought under its provisions. *Bardon* v. *Land and River Improvement Company*, 327.
3. A person in possession, claiming under a tax deed, under which he had obtained title, may institute such a suit. *Ib.*
4. The jurisdiction of a suit so instituted is not affected by the provision in section 1197 of the Revised Statutes of Wisconsin of 1878 conferring for three years a right of action by the grantee in a tax deed against the owner to bar him and his grantees from claiming the land, nor by the provisions of § 22, c. 138, of the Revised Statutes of 1858. *Ib.*

JURY.

Under the act of May 2, 1890, c. 182, providing a temporary government for the Territory of Oklahoma, the provisions of the statutes of Arkansas, that if either party shall desire a panel, the court shall cause the names of 24 competent jurors, written upon separate slips of paper, to be placed in a box to be kept for that purpose, from which the names of 18 shall be drawn and entered on a list in the order in which they are drawn and numbered, and that each party shall be furnished with a copy of that list, from which each may strike the names of three jurors, and return the list so struck to the judge, who shall strike from the original list the names so stricken from the copies, and the first twelve names remaining in the original list shall constitute the jury, are mandatory, and no rule or custom of the court can override them. *Gulf, Colorado & Santa Fé Railway Co.* v. *Shane*, 348.

LIMITATION, STATUTE OF.

See TAX SALE, 2.

LOCAL LAW.

Wisconsin. *See* JURISDICTION, C, 2, 3, 4; TAX SALE.

LONGEVITY PAY.

In computing the time of service which entitles an officer in the army to longevity pay, service in a volunteer regiment is not service "in the army of the United States" within the meaning of the 15th section of the act of July 5, 1838, c. 162, 5 Stat. 256. *United States* v. *Sweeny*, 281.

MINERAL LAND.

1. When the course of a mineral vein is across a claim, instead of in the direction of its length, the side lines of the location of the claim

become, in law, the end lines, and the end lines become the side lines. *Last Chance Mining Co.* v. *Tyler Mining Co.*, 683.

2. In an action, brought under the provisions of Rev. Stat. §§ 2324, 2325, by an adverse claimant to a part of a mineral claim as located, the plaintiff alleged a priority of location, and rested his right to recover upon it. The defendant answered, but subsequently and before judgment withdrew his answer, and amended his application for a patent so as to exclude the tract in controversy. At the trial the defendant did not appear, but the plaintiff introduced evidence, oral and documentary. The court made a finding of fact that the tract in controversy had already been located by the plaintiff as a part of his mining claim when the defendant located his claim upon it, and that, consequently, it was not subject to location by the defendant. Upon that finding it was adjudged that, by reason of the laws and premises, the plaintiff was the owner of the disputed tract, that he was entitled to the possession of it, and that he recover possession of it from the defendant. *Held*, (1) That it appeared by the record that the court had in that case passed upon and determined the question of priority of location, and upon such determination had given judgment in favor of the plaintiff; (2) that the defendant's withdrawal of his answer did not operate to take the complaint out of the case, or the allegations of fact contained in it, or to prevent a judicial determination of those facts; (3) that the abandonment of his claim by the defendant did not take the jurisdiction for the settlement of the question out of the hands of the court, or restore it to the Land Department; (4) that the judgment of the court was in all respects regular; was conclusive as to the particular ground in controversy; and was binding by way of estoppel as to every fact necessarily determined by it, including the question of priority of location. *Ib.*
3. In view of the conclusions reached, it is not necessary to consider what extra-territorial rights (if any) exist when a vein enters at an end line, and passes out at a side line. *Ib.*

NATIONAL BANK.

A note whose payment is guaranteed by a national bank is a liability of the bank which is required by law (Rev. Stat. § 5211) to be shown in the report to the Comptroller of the Currency. *Cochran and Sayre* v. *United States*, 286.

See INDICTMENT.

NEW TRIAL.

Ambiguous or too forcible expressions in a charge may be explained or qualified by other parts of it, and if the charge does not, as a whole, work injustice to the party objecting, the use of such expressions will not be cause for granting a new trial. *Baltimore & Potomac Railroad Co.* v. *Mackey*, 72.

PATENT FOR INVENTION.

1. The provision in Rev. Stat. § 4887 respecting a "patent granted for an invention which has been previously patented in a foreign country" refers to foreign patents granted previously to the issue of letters patent for the same invention by the United States, and not to foreign patents granted previously to the application for the American letters. *Bate Refrigerating Company* v. *Sulzberger*, 1.
2. When such foreign letters issue before the United States letters issue, the American patent is so limited as to expire at the same time with the foreign patent having the shortest term, but in no case is it to be in force more than seventeen years. *Ib.*
3. One who buys patented articles of manufacture from one authorized to sell them becomes possessed of an absolute property in such articles, unrestricted in time or place. *Keeler* v. *Standard Folding Bed Company*, 659.
4. Whether a patentee may protect himself and his assignees by special contracts brought home to the purchasers is not a question before the court and upon which it expresses no opinion. *Ib.*
5. The complainants were assignees, for the State of Massachusetts, of certain letters patent granted to one Welch, for an improvement in wardrobe bedsteads. The Welch Folding Bed Company owned the patent rights for the State of Michigan. The defendants purchased a carload of said beds from the Welch Folding Bed Company, at Grand Rapids, Michigan, for the purpose of selling them in Massachusetts, and afterwards sold them there and were still engaged in selling such beds in Boston. *Held*, that the defendants having purchased the patented articles in Michigan from the assignee of the patent for the territory included in that State, had a right to sell them anywhere within the United States, including Massachusetts, where the patent rights had been assigned to another assignee. *Ib.*
6. The previous cases bearing on this point considered and reviewed. *Ib.*

POST OFFICE DEPARTMENT.

In March, 1878, P. contracted to carry the mails three times a week for four years on route 36,107, commencing July 1, 1878, and entered on the performance of his contract. On the 5th day of the following December, in consequence of false and fraudulent sworn statements made by him concerning the number of horses and men that would be required to expedite the service by reducing the time, a large additional compensation was allowed him by the Postmaster General for that purpose. On the 13th of the same December he sublet his contract to S. with the consent of the Department, and the service was from that time performed by S. Further increased allowances, based on like fraudulent statements by P., were made in January and July, 1879, and assented to by P. and S. The amount so fraudulently received during the term of service was $99,556.20. The govern-

ment sued P. and S. to recover back that sum. In the first count the above facts were set forth and it was alleged that the false statements were designed to mislead and did mislead the Post Office Department. A second count was for money had and received. A third count set forth the same facts and averred that the money had been paid in mistake of fact, and had been received contrary to the provisions of Rev. Stat. § 3961. No process was served upon P., and he did not appear. S. appeared and demurred, and the demurrer was sustained. Each was cited in the writ of error, and service acknowledged by the attorney for both. *Held*, (1) That the statements regarding the "horses and men" required for the expedited service came within the statement as to "stock and carriers" required therefor, as provided in Rev. Stat. § 3961; (2) that P. and S. were bound by these statements and were estopped from asserting that it was not intended thereby to bring the contract within the statute; (3) that the demurrer admitted the fact that the increase had been allowed on the basis of the false representation; (4) that the court below erred in sustaining the demurrer to the third count; (5) that the defendants having each participated in the transaction, were properly sued jointly; (6) that the demurrer should have been overruled. *United States* v. *Piatt and Salisbury*, 113.

See CRIMINAL LAW, 10, 11, 12, 13.

PRACTICE.

1. The plaintiff's declaration claimed $10,000. He obtained a judgment in the trial court for $8000. The appellate court affirmed this judgment, and ordered that he recover "as in his declaration claimed." *Held*, that these words did not have the effect of increasing the sum actually recovered in the special term, and that the inaccuracy was not sufficient ground for reversal. *Baltimore & Potomac Railroad Co.* v. *Mackey*, 72.
2. A request made to the court by each party to instruct the jury to render a verdict in his favor, is not equivalent to the submission of the case to the court without the intervention of a jury, within the intent of Rev. Stat. §§ 649, 700. *Beuttell* v. *Magone*, 154.
3. When each party asks the court to instruct a verdict in his favor, it is equivalent to a request for a finding of facts, and if the court directs the jury to find a verdict for one of them, both are concluded on the finding of facts. *Ib.*

See CRIMINAL LAW, 20; REMOVAL OF CAUSES; JURISDICTION, B, 1; WRIT OF ERROR, 2.

PREFERENCES.

See CORPORATION.

PUBLIC LAND.

1. In view of the treaties between the United States and the Osage Indians, and the laws affecting their lands, enacted prior to December 15, 1880,

it must be *held* that the lands which were, by the act of that date, 21 Stat. 311, directed to be opened for entry under the homestead laws, were lands within the abandoned Fort Dodge military reservation, subject to disposition under general laws relating to "other public lands," and not lands of an exceptional class, that were affected with a trust established for the benefit of Indians by treaty. *Frost* v. *Wenie*, 46.

2. The Commissioner of the General Land Office may direct the proper local land officer to hear and pass upon charges of fraud in the final proof of a preëmption claim upon which the requisite cash entry has been paid, and has jurisdiction to review the judgment of the local land officer in respect thereof; and the Secretary of the Interior has jurisdiction to review such judgment of the Commissioner, and to order such an entry, shown to be fraudulent, to be cancelled. *Orchard* v. *Alexander*, 372.

See MINERAL LAND.

RAILROAD.

1. Knowledge of a defect in a car brake cannot be imputed to the employé charged with keeping it in order, when he has had no opportunity to see it. *Baltimore & Potomac Railroad Co.* v. *Mackey*, 72.
2. A railroad company, receiving the cars of other companies to be hauled in its trains, is bound to inspect such cars before putting them in its trains, and is responsible to its employés for injuries inflicted upon them in consequence of defects in such cars which might have been discovered by a reasonable inspection before admitting them to a train. *Ib.*
3. In an action by an executor of a deceased person against a railroad company to recover damages for the killing of the intestate, an employé of the company, brought under the act of February 17, 1885, c. 126, 23 Stat. 307, which provides that "the damages recovered in such action shall not be appropriated to the payment of the debts or liabilities of such deceased person, but shall inure to the benefit of his or her family, and be distributed, according to the provisions of the statute of distributions," it is not error to charge the jury that in estimating damages they may take into consideration the age of the deceased, his health and strength, his capacity to earn money as disclosed by the evidence, his family, who they are and what they consist of, and from all the facts and all the circumstances make up their minds how much the family would probably lose by his death. *Ib.*
4. A bridge carpenter, employed by a railroad company, who is injured through the negligence of employés of the company while assisting in loading lumber, taken from an old bridge, on a car for transportation over the road, is an employé of the company within the meaning of § 93, c. 23, of the General Statutes of Kansas which makes a railroad company in that State liable to its employés for damage done them

through the negligence of its agents or the mismanagement of its employés. *Chicago, Kansas & Western Railroad Co.* v. *Pontius*, 209.

5. The Pennsylvania Company notified the Wabash Company that after a date named no ticket sold by that company would be recognized as entitling the holder to pass over the Pennsylvania road. The Wabash Company after that date sold a ticket for a passage over the Pennsylvania road. When the purchaser reached that road he offered his ticket to the conductor. The conductor refused to take it, and, when the holder of it declined to pay his fare, caused him to be put off the train. *Held*, That the refusal to recognize the ticket was within the right of the Pennsylvania Company, and that that closed the matter, as between the two companies in respect of the unauthorized sale; but that the ejection from the train was done by the Pennsylvania Company on its own responsibility, and was not made legally necessary by anything done by the Wabash Company which the Pennsylvania Company was bound to recognize or respect. *Pennsylvania Railroad Co.* v. *Wabash, St. Louis & Pacific Railway Co.*, 225.

REASONABLE DOUBT.

See CRIMINAL LAW, 17.

RECEIVER.

1. A Circuit Court of the United States has not the power to appoint a receiver of property already in the possession of a receiver duly and previously appointed by a state court, and cannot rightfully take the property out of the hands of the receiver so appointed by the state court. *Shields* v. *Coleman*, 168.
2. The mere forcible continuance of possession wrongfully acquired by the Federal court does not transform that which was in the first instance wrongful, into a rightful possession. *Ib.*

REMOVAL OF CAUSES.

When a defendant in a state court removes the cause to a Circuit Court of the United States on the ground of diverse citizenship, and the Circuit Court gives judgment for the defendant, and the plaintiff below brings the case here, and it appears, on examining the record, that the pleadings do not disclose of what State the plaintiff was a citizen, this court will of its own motion reverse the judgment, remand the cause to the Circuit Court, with costs against the defendant in error, and further adjudge that defendant must also pay costs in this court. *Neel* v. *Pennsylvania*, 153.

SMUGGLING.

See CRIMINAL LAW, 18;
WITNESS, 2.

STARE DECISIS.

The doctrine of *stare decisis* is a salutary one, and is to be adhered to on proper occasions, in respect of decisions directly upon points in issue; but this court should not extend any decision upon a constitutional question, if it is convinced that error in principle might supervene. *Pollock* v. *Farmers' Loan & Trust Company*, 429.

STATUTE.

A. Construction of Statutes.

1. When the language used in a statute is plain and unambiguous, a refusal to recognize its natural obvious meaning may be justly regarded as indicating a purpose to change the law by judicial action, based upon some supposed policy of Congress. *Bate Refrigerating Company* v. *Sulzberger*, 1.
2. *United States* v. *Bowen*, 100 U. S. 508, cited approvingly to the point that "the Revised Statutes must be treated as the legislative declaration of the statute law on the subjects which they embrace on the first day of December, 1873," and that "when the meaning is plain, the courts cannot look to the statutes which have been revised to see if Congress erred in that revision, but may do so when necessary to construe doubtful language used in expressing the meaning of Congress." *Ib.*
3. Where two statutes cover, in whole or in part, the same matter, and are not absolutely irreconcilable, and no purpose to repeal the earlier act is expressed or clearly indicated, the court will, if possible, give effect to both. *Frost* v. *Wenie*, 46.

See Tax Sales, 1, 4.

B. Statutes of the United States.

See Criminal Law, 4, 10, 18;
Customs Duties, 1, 2, 4, 5;
Indictment, 1;
Jurisdiction, B, 1, 6; C, 1;
Jury;
Longevity Pay;
Mineral Land, 2;
National Bank;
Post Office Department;
Practice, 2;
Public Land, 1;
Railroad, 3.

C. Statutes of States and Territories.

Kansas. *See* Railroad, 4.
New Jersey. *See* Constitutional Law, 9.
Oklahoma. *See* Jury.
Wisconsin. *See* Jurisdiction, C, 2, 4; Tax Sale, 4, 5.

TAX.

See Constitutional Law, 3, 4, 5, 6, 7;
Jurisdiction, B, 9;
Tax Sale.

TAX SALE.

1. Questions affecting the validity of a tax deed of real estate in a State must be disposed of in accordance with the interpretation of the statutes of the State by its highest judicial tribunal. *Bardon* v. *Land & River Improvement Co.*, 327.
2. In Wisconsin when a tax deed is in due form and recorded in the proper office, and the lands described therein remain vacant and unoccupied for three years or more after the recording thereof, the tax title claimant is deemed to be in constructive possession, the statute of limitations runs in his favor, and the original owner is barred from attacking the validity of the tax deed. *Ib.*
3. The introduction of certain evidence by the appellee held not to be a waiver of its right to rely on the statute of limitations. *Ib.*
4. In considering the acts and proceedings of county boards acting under Rev. Stats. Wis. of 1858, c. 13, § 28, they must be liberally construed. *Ib.*
5. The Revised Statutes of Wisconsin of 1858 provided that the register of deeds should keep a general index, each page of which should be divided into eight columns, with heads to the respective columns, as follows: "Time of reception. Name of grantor. Name of grantee. Description of land. Name of instrument. Volume and page where recorded. To whom delivered. Fees received;" that such register should make correct entries in said index of every instrument or writing received by him for record, under the respective and appropriate heads, entering the names of the grantors in alphabetical order; and should immediately, upon the receipt of any such instrument or writing for record, enter in the appropriate column and in the order in which it was received the day, hour, and minute of its reception, and the same should be considered as recorded at the time so noted. By section 759 of the Revised Statutes of 1878 it is directed that the division shall be into nine columns, the first column being headed: "Number of instrument," and the others as in the act of 1858. In this case the tax deed was entered in the index under the name of Douglas County by which it was issued, although running in the name of the State as well as of the county. The original index had the eight divisions required by the statute, but the fourth column, under the heading "Description," was subdivided as shown in the opinion. This index becoming dilapidated was laid aside, and a new one was prepared under the provisions of the laws of 1860, c. 201, which complied with the provisions of the statute in that respect, and was substituted for the original. *Held*, (1) That it was not necessary to insert in the index the name of the State as a grantor; (2) that taking the page of the original index as a whole, no one could be misled by it who was not wilfully misled, and it was sufficient to set the statute of limitations in operation; (3) that the new

and correct index, having been properly certified to according to law, was from that date as effective as the original; (4) that the appellant could not question the complainant's title on the ground of informality in the original. *Ib.*

VERDICT.

See CRIMINAL LAW, 14.

WITNESS.

1. When a person accused of crime offers himself as a witness in his own behalf, the court is not at liberty to charge the jury directly or indirectly that the defendant is to be disbelieved because he is a defendant; but, on the other hand, the court may, and sometimes ought to, remind the jury that interest creates a motive for false testimony; that the greater the interest the stronger is the temptation; and that the interest of the defendant in the result of the trial is of a character possessed by no other witness, and is therefore a matter which may seriously affect the credence that shall be given to his testimony. *Reagan* v. *United States*, 301.
2. In this case the defendant, accused of the offence of smuggling, was a witness on his own behalf. The court instructed the jury thus: "You should especially look to the interest which the respective witnesses have in the suit or in its result. Where the witness has a direct personal interest in the result of the suit the temptation is strong to color, pervert, or withhold the facts. The law permits the defendant, at his own request, to testify in his own behalf. The defendant here has availed himself of this privilege. His testimony is before you and you must determine how far it is credible. The deep personal interest which he may have in the result of the suit should be considered by the jury in weighing his evidence and in determining how far or to what extent, if at all, it is worthy of credit." *Held*, that there was, in this instruction, nothing of which complaint could reasonably be made. *Ib.*
3. The accused was a witness in his own behalf. The court instructed the jury: "The defendant goes upon the stand before you and he makes his statement; tells his story. Above all things, in a case of this kind you are to see whether that statement is corroborated substantially and reliably by the proven facts; if so, it is strengthened to the extent of its corroboration. If it is not strengthened in that way you are to weigh it by its own inherent truthfulness, its own inherent proving power that may belong to it." *Held*, that, taken in connection with the rest of the charge, there was no error in this. *Johnson, alias Overton*, v. *United States*, 320.

WRIT OF ERROR.

1. A writ of error, which names, as the plaintiff in error, a certain person as administrator of a certain estate, may be amended by substituting

the name of another person who appears by the accompanying record to have claimed to succeed him as such administrator, tendered the bill of exceptions, and given bond to prosecute the writ of error. *Walton* v. *Marietta Chair Company*, 342.

2. A writ of error should state the Christian name of the plaintiff in error, and not the initial letter thereof only. *Ib.*